

9-6.000

**RELEASE AND DETENTION
PENDING JUDICIAL PROCEEDINGS --
18 U.S.C. §§ 3141 ET SEQ.**

9-6.100 Introduction

9-6.200 Pretrial Disclosure of Witness Identity

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The release and detention of defendants pending judicial proceedings is governed by the Due Process Clause of the Fifth Amendment, the Excessive Bail Clause of the Eighth Amendment, and the Bail Reform Act of 1984. The Bail Reform Act of 1984 provides procedures to detain a dangerous offender, as well as an offender who is likely to flee pending trial or appeal. *See United States v. Salerno*, 481 U.S. 739 (1987).

For a discussion of the provisions of the Bail Reform Act of 1984 (18 U.S.C §§ 3141 *et seq.*) and related case law see the Criminal Resource Manual at 26.

9-6.200 Pretrial Disclosure of Witness Identity

Insuring the safety and cooperativeness of prospective witnesses, and safeguarding the judicial process from undue influence, are among the highest priorities of federal prosecutors. *See* the Victim and Witness Protection Act of 1982, P.L. 97-291, § 2, 96 Stat. 1248-9.

Therefore, it is the Department's position that pretrial disclosure of a witness' identity or statement should not be made if there is, in the judgment of the prosecutor, any reason to believe that such disclosure would endanger the safety of the witness or any other person, or lead to efforts to obstruct justice. Factors relevant to the possibility of witness intimidation or obstruction of justice include, but are not limited to, the types of charges pending against the defendant, any record or information about the propensity of the defendant or the defendant's confederates to engage in witness intimidation or obstruction of justice, and any threats directed by the defendant or others against the witness. In addition, pretrial disclosure of a witness' identity or statements should not ordinarily be made against the known wishes of any witness.

However, pretrial disclosure of the identity or statements of a government witness may often promote the prompt and just resolution of the case. Such disclosure may enhance the prospects that the defendant will plead guilty or lead to the initiation of plea negotiations; in the event the defendant goes to trial, such disclosure may expedite the conduct of the trial by eliminating the need for a continuance.

Accordingly, with respect to prosecutions in federal court, a prosecutor should give careful consideration, as to each prospective witness, whether absent any indication of potential adverse consequences of the kind mentioned above reason exists to disclose such witness' identity prior to trial. It should be borne in mind that a decision by the prosecutor to disclose pretrial the identity of potential government witnesses may be conditioned upon the defendant's making reciprocal disclosure as to the identity of the potential defense witnesses. Similarly,

when appropriate in light of the facts and circumstances of the case, a prosecutor may determine to disclose only the identity, but not the current address or whereabouts of a witness.

In sum, whether or not to disclose the identity of a witness prior to trial is committed to the discretion of the federal prosecutor, and that discretion should be exercised on a case-by-case, and witness-by-witness basis. Considerations of witness safety and willingness to cooperate, and the integrity of the judicial process are paramount.